
(2022) 05 J&K CK 0037

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 81 Of 2022

Mohammad Jalal Sheikh

APPELLANT

Vs

Union Territory Of J&K & Anr

RESPONDENT

Date of Decision : 13-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 19, 22, 22(5)
Jammu And Kashmir Public Safety Act, 1978 — Section 8

Citation : (2022) 05 J&K CK 0037

Hon'ble Judges : M.A.Chowdhary, J

Bench : Single Bench

Advocate : Mir Suhail, Sheikh Feroz, Sajad Ashraf

Final Decision : Disposed Of

Judgement

M. A. Chowdhary, J

1. In exercise of powers under Section 8 of the Jammu & Kashmir Public Safety Act, 1978 (for short 'the Act'), District Magistrate Srinagar has passed the detention Order No. DMS/PSA/143/2021 dated 28.02.2022 (for short 'impugned order'), in terms whereof the detainee-Mohammad Jalal Sheikh was ordered to be detained under the Act.

2. The detention of the detainee has been challenged INTER ALIA on the grounds that the allegations leveled in the grounds of detention are vague, non-existent and no prudent man can make a representation against such allegations and passing of detention on such grounds is unjustified and unreasonable. It is the contention of the detainee that he was already on bail in FIR No.19/2022 and the detaining authority despite having knowledge about the bail has not spelled out the compelling reasons to pass the detention order after delay more particularly given the fact that the detainee was at large and no illegal activity was attributed to him, as such, the detention order suffers from non-application of mind on the part of the Detaining authority, and deserves to be quashed. Furthermore, it is

contended that the relevant material has not been furnished to the detainee and whatever material was furnished to him, it was not possible to make a purposeful representation, thus, the right of the detainee under Article 22 of the Constitution stands violated. His further contention is that he has filed representation, post-detention, but the same has not been considered till date. It is submitted that because of non-consideration of his representation, the detention order slapped upon him is liable to be quashed. Copy of the representation is annexed with the writ petition.

3. Respondents have filed their reply affidavit, wherein it is stated that the order of detention was passed by the detaining authority after being satisfied on the basis of the material available including the dossier submitted by Senior Superintendent of Police, Srinagar that it was necessary with a view to prevent the detainee from acting in any manner prejudicial to the maintenance of security of the State to place the detainee under preventive detention. It is submitted that the detention of the detainee has been ordered strictly in accordance with the provisions of the Act and the procedural safeguards prescribed under the provisions of the Act and the rights guaranteed to the detainee under the Constitution have strictly been followed in the instant case. It is further submitted that the grounds of detention transpire the activities of the detainee which, on the face of it, are highly prejudicial to the security of the State and, therefore, there was no option left to the detaining authority but to order detention of the detainee under the Act.

4. With regard to the allegation of non-consideration of the detainee's representation, in the reply affidavit, there is no mention that the detainee has filed any representation.

5. Heard learned counsel for the parties and perused the material on record including the detention record.

6. It has been contended on behalf of the petitioner that representation on his behalf had been submitted to detaining authority. Despite pleading specifically by the detainee that he has submitted representation, post-detention, respondents except mentioning that the detainee was also informed about his right to submit representation against his detention, has not responded as to whether any representation was filed and how the same was dealt with.

7. Perusal of the detention record does not reveal or indicate anything with regard to receipt or disposal of the representations. It is thus, evident from the pleadings of the respondents as well as detention record that representation submitted on behalf of the detainee has not been considered by them so far.

8. Admittedly, as is evident from the copy of representation, placed on file, the detainee had filed the representation against his detention on 12.03.2022 to the Detaining authority and the same has not been considered by the respondents till date, inasmuch as, there is no mention with regard to the said representation filed by the detainee, either in the reply affidavit or in the detention record. As

such, this Court is left with no option but to accept the stand of the detainee that he has moved representation against his detention, but the same has not been considered.

9. Article 22(5) of the Constitution of India, casts legal obligation on the Government to consider the detainee's representation as early as possible. It is obligatory for the detaining Authority or the Government, as the case may be, to consider the representation of the detainee and pass appropriate orders thereon. There should be no slackness, indifference and callous attitude in consideration of the representation of a person who is detained. Any unexplained delay would render the continued detention of the detainee as illegal. Every day delay in dealing with the representation has to be explained and the explanation offered must be reasonably indicating that there was no slackness or indifference.

10. Hon'ble Supreme Court in the case "Tara Chand vs State of Rajasthan & Ors., 1980 (2) SCC 321" has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

11. The Supreme Court in another case "Dr. Rahmatullah vs State of Bihar, AIR 1981 SC 2069" has held that clause (5) of Article 22 of the Constitution of India by necessary implication guarantees the constitutional right to a proper consideration of the representation. The obligation of the Government to afford to the detainee an opportunity to make representation is distinct from the Government's obligation to refer the case of the detainee along with representation to the Advisory Board to enable it to form its opinion and send a report to the Government. Para-4 of the said judgment will be advantageous to be quoted hereunder:-

"4.The normal rule of law is that when a person commits an offence or a number of offences, he should be prosecuted and punished in accordance with the normal appropriate criminal law; but if he is sought to be detained under any of the preventive detention laws as may often be necessary to prevent further commission of such offences, then the provisions of Article 22(5) must be complied with. Sub- Article\ (5) of Article 22 reads:

'When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.'

This Sub-Article provides, inter alia, that the detaining authority shall as soon as may be communicate the grounds of detention and shall afford him the earliest opportunity of making a representation against the order. The opportunity of making a representation is not for nothing. The representation, if any, submitted by the detainee is meant for consideration by the Appropriate Authority without any unreasonable delay, as it involves the liberty of a citizen guaranteed by

Article 19 of the Constitution.

The non-consideration or an unreasonably belated consideration of the representation tantamount to non-compliance of Sub-Article (5) of Article 22 of the Constitution.”

12. Therefore, it is implicit in clause (5) of Article 22 of the Constitution that the Government, while discharging its duty to consider the representation, cannot depend upon the views of the Board on such representation. It has to consider the representation on its own without being influenced by any such view of the Board.

13. The Supreme Court in the case “Kundanbhai Dulabhai Sheikh vs. District Magistrate Ahmedabad & Ors. 1996 CrL.J 1981” quashed the detention order only on the ground of delay in disposing of the representation.

14. Viewed thus, in the context what has been observed, analyzed and considered in the preceding paras, the instant petition is allowed and consequently the impugned order of detention bearing No. DMS/PSA/143/2021 dated 28.02.2022, is quashed. Detenue namely Mohammad Jalal Sheikh S/O Late Ghulam Mohamamd Sheikh R/O Samoon Colony Solina Srinagar, be released forthwith, if not required in connection with any other criminal case(s) pending against him.

15. Petition is disposed of accordingly.

16. Scanned copy of the record be returned to the learned counsel for the respondents.